IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T.R. No. 47 of 2003
(Old No. 427/ 1991)

Commissioner of Sales Tax
U.P. Lucknow. ……..Applicant/Revisionist

Vs.

Executive Engineer, Abhiyantran Seva
Almora ……Opposite Party

Shri S.K. Posti, Advocate for the revisionist.
Shri Pitamber Maulekhi, Additional Advocate General for the respondent.

Hon'ble Prafulla C. Pant, J.

Heard.

This revision, preferred under Section 11 (1) of the U.P. Sales Tax Act, 1948, is directed against the judgment and order dated 20.02.1991, passed by the Sales Tax Tribunal, Haldwani.

The only point involved in this revision is whether cement supplied by the Public Works Department (government department) to its contractors for completion of its work, is sale for the purpose of U.P. Sales Tax Act, 1948.

This revision pertains to the assessment year 1981-82. The assessee in this case is a Government Department i.e P.W.D. Facts of the case are that the said department (assessee) supplies the cement to the contractors for the construction work assigned to them.

The supply of cement by the Government Department to contractor, for its own work, cannot be said to be sale for the purposes of Sales Tax Act, 1948, as it does not fulfill the definition of 'Sale', as contained under Section 2(h) of the said Act. In Northern India Caters Vs. Lt. Governor, Delhi, 1979, UPTC Pg. 826 and U.P. Awas Vikas Parishad, Bulandsahar Vs.

Commissioner, Sales Tax, 1989 UPTC Pg. 1010, it has been clarified that supply of cement by the department to its contractor is not sale.

In view of aforesaid discussion, there is no error of law committed by learned Sales Tax Tribunal. As such, the revision is liable to be dismissed. And the same is dismissed in limine.

(Prafulla C. Pant, J.)

Dt: 17.09.2005
Sweta